

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TELEBRANDS CORPORATION,

Plaintiff,

v.

WINSTON PRODUCTS LLC,

Defendant.

Case No. 1:23-cv-00631-BMB

Judge Bridget Meehan Brennan

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

In accordance with the Court’s March 26, 2024 Order (“Order”), Plaintiff Telebrands Corporation (“Telebrands”) and Defendant Winston Products LLC (“Winston”) (collectively, the “Parties”) hereby submit this Joint Claim Construction and Prehearing Statement pursuant to L.P.R. 4.5.

(a) Agreed Constructions

Pursuant to L.P.R. 4.5(a), the Parties hereby provide the constructions of claim terms on which the Parties agree.

Claim Term / Phrase	Agreed Construction
“First coupler”	“A first connecting device/fitting”
“Second coupler”	“A second connecting device/fitting”
“Extend around an outer circumference of said hose”	“Extend around the outside of the hose”

(b) Proposed Constructions For Disputed Terms

Pursuant to L.P.R. 4.5(b), the Parties hereby provide their respective constructions of the disputed claim terms as well as identification of all the intrinsic and extrinsic evidence on which each Party intends to rely on.

1. Group A Claim Terms

a. Telebrands' Proposed Constructions and Evidence

Claim Term / Phrase	Telebrands' Proposed Construction	Evidence
'870 Patent, Claims 1, 5 and '278 Patent, Claims 1, 5 and '915 Patent, Claims 1, 4: "Secured to"	Plain and ordinary meaning; no construction necessary	<p><u>Intrinsic Evidence:</u>¹</p> <ul style="list-style-type: none"> '870 Patent at Figs. 1, 3, 7, 8; Abstract; 6:65-7:15; 7:34-36; 7:62-67; 8:43-9:9; 10:1-20; 10:57-11:49; 12:1-33; 12:45-13:27; Claims 1, 5, 10, 11 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> Webster's New World Dictionary and Thesaurus, Second Edition, 2013²: "secure" and "secured" Merriam-Webster's Collegiate Dictionary, Eleventh Edition, 2003³: "secure," "secured," and "securing" Webster's American English Dictionary, 2022⁴: "secure" Color Oxford English Dictionary, Third Edition, 2011⁵: "secure" Concise Oxford English Dictionary, 2008⁶: "secure" Oxford English Dictionary, Second Edition, 1991⁷: "secure" Reports and testimony of Dr. James L. Glancey regarding a POSITA's understanding of this claim term and materials Dr. Glancey relied on. Materials that Winston's expert, Dr. John M. Feland III, relied on.

¹ Telebrands contends Winston infringes U.S. Patent Nos. 10,174,870 ("the '870 Patent"), 10,890,278 ("the '278 Patent"), and 11,608,915 ("the '915 Patent") (collectively, "the Asserted Patents"). Because the Asserted Patents share a common specification, Telebrands only cites to the '870 Patent when referring to the Asserted Patents for brevity and ease of reference.

² "Webster New World Dictionary."

³ "Merriam-Webster Dictionary."

⁴ "Webster's American Dictionary."

⁵ "Color Oxford Dictionary."

⁶ "Concise Oxford Dictionary."

⁷ "Oxford Dictionary."

Claim Term / Phrase	Telebrands' Proposed Construction	Evidence
'870 Patent, Claim 1 and '278 Patent, Claim 1 and '915 Patent, Claim 1: "To Couple"	Plain and ordinary meaning; no construction necessary"	<u>Intrinsic Evidence:</u> <ul style="list-style-type: none"> '870 Patent at Figs. 1, 3, 7, 8; Abstract; 6:65-7:15; 7:34-36; 7:62-67; 8:43-9:9; 10:1-20; 10:57-11:49; 12:1-33; 12:45-13:27; Claims 1, 10, 11 <u>Extrinsic Evidence:</u> <ul style="list-style-type: none"> Webster New World Dictionary: "couple," "coupled" and "coupling" Merriam-Webster Dictionary: "couple," "coupled," and "coupling" Webster's American Dictionary: "couple" and "coupling" Color Oxford Dictionary: "couple" Concise Oxford Dictionary: "couple" Oxford Dictionary: "couple" Reports and testimony of Dr. James L. Glancey regarding a POSITA's understanding of this claim term and materials Dr. Glancey relied on. Materials that Winston's expert, Dr. John M. Feland III, relied on.
'870 Patent, Claim 1 and '278 Patent, Claim 1: "Coupled to"	Plain and ordinary meaning; no construction necessary	<u>Intrinsic Evidence:</u> <ul style="list-style-type: none"> '870 Patent at Figs. 1, 3, 7, 8; Abstract; 6:65-7:15; 7:34-36; 7:62-67; 8:43-9:9; 10:1-20; 10:57-11:49; 12:1-33; 12:45-13:27; Claims 1, 10, 11 <u>Extrinsic Evidence:</u> <ul style="list-style-type: none"> Webster New World Dictionary: "couple," "coupled" and "coupling" Merriam-Webster Dictionary: "couple," "coupled," and "coupling" Webster's American Dictionary: "couple" and "coupling" Color Oxford Dictionary: "couple" Concise Oxford Dictionary: "couple" Oxford Dictionary: "couple" Reports and testimony of Dr. James L. Glancey regarding a POSITA's understanding of this claim term and materials Dr. Glancey relied on. Materials that Winston's expert, Dr. John M. Feland III, relied on.

b. Winston's Proposed Constructions and Evidence

Claim Term / Phrase	Winston's Proposed Construction	Evidence
'870 Patent, Claims 1, 5 and '278 Patent, Claims 1, 5 and '915 Patent, Claims 1, 4: "Secured to"	affixed or attached firmly so it cannot be readily removed from	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> '870 Patent at Figs. 1, 3, 7 & 8, '870 Patent at Abstract; 1:47-53, 7:5-10, 7:10-16, 7:34-36, 7:62-67, 8:44-50, 8:61-64, 9:1-4, 10:57-59, 10:65-67, 11:13-16, 11:20-22, 11:23-39, 11:45-47, 12:49-52, 12:58-64, 12:46-13:5, 13:54-55, 14:1-4, '870 Patent Claims 1, 5, 7, 11, 16, & 18 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> Color Oxford English Dictionary, Third Edition, 2011: "secure" Concise Oxford English Dictionary, 2008: "secure" Oxford English Dictionary, Second Edition, 1991: "secure" Oxford Thesaurus of English: "affix", "attach", "connect", "connection", "make fast", "tie" Reports and testimony of Dr. John M. Feland III regarding a POSITA's understanding of this claim term and materials Dr. Feland relied on. Reports and testimony of Dr. James L. Glancey and materials Dr. Glancey relied on.
'870 Patent, Claim 1 and '278 Patent, Claim 1 and '915 Patent, Claim 1: "To Couple"	to removably connect	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> '870 Patent at Figs. 1, 3, 7 & 8, '870 Patent at Abstract, 7:34-36, 8:44-50, 8:51-54, 8:54-57, 8:58-61, 8:61-64, 10:15-19, 10:63-11:4, 11:20-22, 11:23-26, 11:31-33, 11:45-47, 12:49-52, 12:58-64, 15:12-13, 15:21, '870 Patent Claims 1 & 16 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> Color Oxford Dictionary: "couple" Concise Oxford Dictionary: "couple" Oxford Dictionary: "couple" Oxford Thesaurus of English: "affix", "attach", "connect", "connection", "make fast", "tie" Reports and testimony of Dr. John M. Feland III regarding a POSITA's understanding of this claim term and materials Dr. Feland relied on.

Claim Term / Phrase	Winston's Proposed Construction	Evidence
'870 Patent, Claim 1 and '278 Patent, Claim 1: "Coupled to"	removably connected to	<ul style="list-style-type: none"> Reports and testimony of Dr. James L. Glancey and materials Dr. Glancey relied on. <p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> '870 Patent at Figs. 1, 3, 7 & 8, '870 Patent at Abstract, 7:34-36, 8:44-50, 8:51-54, 8:54-57, 8:58-61, 8:61-64, 10:15-19, 10:63-11:4, 11:20-22, 11:23-26, 11:31-33, 11:45-47, 12:49-52, 12:58-64, 15:12-13, 15:21, '870 Patent Claims 1, 16 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> Color Oxford English Dictionary, Third Edition, 2011: "secure" Concise Oxford English Dictionary, 2008: "secure" Oxford English Dictionary, Second Edition, 1991: "secure" Oxford Thesaurus of English: "affix", "attach", "connect", "connection", "make fast", "tie" Reports and testimony of Dr. John M. Feland III regarding a POSITA's understanding of this claim term and materials Dr. Feland relied on. Reports and testimony of Dr. James L. Glancey and materials Dr. Glancey relied on.

2. Group B Claim Terms

a. Telebrands' Proposed Constructions and Evidence

Claim Term / Phrase	Telebrands' Proposed Construction	Evidence
'870 Patent, Claim 1: "Said inner and outer tubes unsecured between said first and second ends so that said outer tube is not held in frictional contact with said inner tube so that said outer tube can move freely along said inner tube"	Plain and ordinary meaning; no construction necessary	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> '870 Patent at Figs. 1, 3, 7, 8; Abstract; 1:39-53; 6:65-7:15; 7:34-36; 7:62-67; 8:43-9:9; 10:1-20; 10:57-11:49; 12:1-33; 12:45-13:27; Claims 1, 10, 11 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> Webster New World Dictionary: "secure" and "secured" Merriam-Webster Dictionary: "secure," "secured," and "securing"

Claim Term / Phrase	Telebrands' Proposed Construction	Evidence
		<ul style="list-style-type: none"> • Webster's American Dictionary: "secure" • Color Oxford Dictionary: "secure" • Concise Oxford Dictionary: "secure" • Oxford Dictionary: "secure" • Reports and testimony of Dr. James L. Glancey regarding a POSITA's understanding of this claim term and materials Dr. Glancey relied on. • Materials that Winston's expert, Dr. John M. Feland III, relied on.
<p>'278 Patent, Claim 1:</p> <p>"Said inner tube is unsecured to said outer tube between said first and second ends so that said outer tube outer tube [sic] can move freely over said inner tube"</p>	<p>Plain and ordinary meaning; no construction necessary</p>	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> • '870 Patent at Figs. 1, 3, 7, 8; Abstract; 1:39-53; 6:65-7:15; 7:34-36; 7:62-67; 8:43-9:9; 10:1-20; 10:57-11:49; 12:1-33; 12:45-13:27; Claims 1, 10, 11 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> • Webster New World Dictionary: "secure" and "secured" • Merriam-Webster Dictionary: "secure," "secured," and "securing" • Webster's American Dictionary: "secure" • Color Oxford Dictionary: "secure" • Concise Oxford Dictionary: "secure" • Oxford Dictionary: "secure" • Reports and testimony of Dr. James L. Glancey regarding a POSITA's understanding of this claim term and materials Dr. Glancey relied on. • Materials that Winston's expert, Dr. John M. Feland III, relied on.
<p>'915 Patent, Claim 1:</p> <p>"Said flexible inner tube unsecured to said flexible outer tube between said first and second ends so that said flexible outer tube can move freely over said flexible inner tube"</p>	<p>Plain and ordinary meaning; no construction necessary</p>	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> • '870 Patent at Figs. 1, 3, 7, 8; Abstract; 1:39-53; 6:65-7:15; 7:34-36; 7:62-67; 8:43-9:9; 10:1-20; 10:57-11:49; 12:1-33; 12:45-13:27; Claims 1, 10, 11 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> • Webster New World Dictionary: "secure" and "secured" • Merriam-Webster Dictionary: "secure," "secured," and "securing" • Webster's American Dictionary: "secure"

Claim Term / Phrase	Telebrands' Proposed Construction	Evidence
		<ul style="list-style-type: none"> • Color Oxford Dictionary: "secure" • Concise Oxford Dictionary: "secure" • Oxford Dictionary: "secure" • Reports and testimony of Dr. James L. Glancey regarding a POSITA's understanding of this claim term and materials Dr. Glancey relied on. • Materials that Winston's expert, Dr. John M. Feland III, relied on.

b. Winston's Proposed Constructions and Evidence

Claim Term / Phrase	Winston's Proposed Construction	Evidence
'870 Patent, Claim 1: "Said inner and outer tubes unsecured between said first and second ends so that said outer tube is not held in frictional contact with said inner tube so that said outer tube can move freely along said inner tube"	the inner and outer tubes are not affixed or attached firmly except at their first and second ends so that the outer tube can move freely along the inner tube between the couplers	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> • '870 Patent Fig. 1, 2, 3, 4, 5, 6, 7, & 8 • '870 Patent 7:10-16, 8:32-33, 9:1-9, 9:47-50, 12:7-11, 12:64-13:2, 13:10-22, 13:22-27, 13:52, 14:1, 15:22-23, • '870 Patent Claims 1, 5, 11, 16 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> • Color Oxford English Dictionary, Third Edition, 2011: "secure" • Concise Oxford English Dictionary, 2008: "secure" • Oxford English Dictionary, Second Edition, 1991: "secure" • Oxford Thesaurus of English: "affix", "attach", "connect", "connection", "make fast", "tie" • Reports and testimony of Dr. John M. Feland III regarding a POSITA's understanding of this claim term and materials Dr. Feland relied on. • Reports and testimony of Dr. James L. Glancey and materials Dr. Glancey relied on.
'278 Patent, Claim 1: "Said inner tube is unsecured to said outer tube between said first and second	the inner tube is not affixed or attached firmly to the outer tube except at their first and second ends so that the outer tube can move	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> • '870 Patent Fig. 1, 2, 3, 4, 5, 6, 7, & 8 • '870 Patent 7:10-16, 8:32-33, 9:1-9, 9:47-50, 12:7-11, 12:64-13:2, 13:10-22, 13:22-27, 13:52, 14:1, 15:22-23, • '870 Patent Claims 1, 5, 11, 16

Claim Term / Phrase	Winston's Proposed Construction	Evidence
ends so that said outer tube outer tube [sic] can move freely over said inner tube"	freely along the inner tube between the couplers	<u>Extrinsic Evidence:</u> <ul style="list-style-type: none"> • Color Oxford English Dictionary, Third Edition, 2011: "secure" • Concise Oxford English Dictionary, 2008: "secure" • Oxford English Dictionary, Second Edition, 1991: "secure" • Oxford Thesaurus of English: "affix", "attach", "connect", "connection", "make fast", "tie" • Reports and testimony of Dr. John M. Feland III regarding a POSITA's understanding of this claim term and materials Dr. Feland relied on. • Reports and testimony of Dr. James L. Glancey and materials Dr. Glancey relied on.
'915 Patent, Claim 1: "Said flexible inner tube unsecured to said flexible outer tube between said first and second ends so that said flexible outer tube can move freely over said flexible inner tube"	the flexible inner tube is not affixed or attached firmly to the flexible outer tube except at their first and second ends so that the flexible outer tube can move freely over the flexible inner tube	<u>Intrinsic Evidence:</u> <ul style="list-style-type: none"> • '870 Patent Fig. 1, 2, 3, 4, 5, 6, 7, & 8 • '870 Patent 7:10-16, 8:32-33, 9:1-9, 9:47-50, 12:7-11, 12:64-13:2, 13:10-22, 13:22-27, 13:52, 14:1, 15:22-23, • '870 Patent Claims 1, 5, 11 <u>Extrinsic Evidence:</u> <ul style="list-style-type: none"> • Color Oxford English Dictionary, Third Edition, 2011: "secure" • Concise Oxford English Dictionary, 2008: "secure" • Oxford English Dictionary, Second Edition, 1991: "secure" • Oxford Thesaurus of English: "affix", "attach", "connect", "connection", "make fast", "tie" • Reports and testimony of Dr. John M. Feland III regarding a POSITA's understanding of this claim term and materials Dr. Feland relied on. • Reports and testimony of Dr. James L. Glancey and materials Dr. Glancey relied on.

3. Group C Claim Terms

a. Telebrands' Proposed Constructions and Evidence

Claim Term / Phrase	Telebrands' Proposed Construction	Evidence
<p>'870 Patent, Claim 5</p> <p>and</p> <p>'278 Patent, Claim 5:</p> <p>"A first restrictor sleeve secured to said first end of said inner and said outer tubes"</p> <p>—</p> <p>'915 Patent, Claim 4:</p> <p>"A first restrictor sleeve secured to said first end of said flexible inner tube and said flexible outer tube"</p>	<p>Plain and ordinary meaning; no construction necessary</p>	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> '870 Patent at Figs. 1, 3, 7, 8; Abstract; 1:39-53; 6:65-7:15; 7:34-36; 7:62-67; 8:11-9:9; 10:1-20; 10:57-11:49; 12:1-33; 12:45-13:27; Claims 1, 5, 7, 10, 11 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> Webster New World Dictionary: "secure" and "secured" Merriam-Webster Dictionary: "secure," "secured," and "securing" Webster's American Dictionary: "secure" Color Oxford Dictionary: "secure" Concise Oxford Dictionary: "secure" Oxford Dictionary: "secure" Reports and testimony of Dr. James L. Glancey regarding a POSITA's understanding of this claim term and materials Dr. Glancey relied on. Materials that Winston's expert, Dr. John M. Feland III, relied on.
<p>'870 Patent, Claim 5</p> <p>and</p> <p>'278 Patent, Claim 5:</p> <p>"A second restrictor sleeve secured to said second end of said inner and said outer tubes"</p> <p>—</p> <p>'915 Patent, Claim 4:</p> <p>"A second restrictor sleeve secured to said second end of</p>	<p>Plain and ordinary meaning; no construction necessary</p>	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> '870 Patent at Figs. 1, 3, 7, 8; Abstract; 1:39-53; 6:65-7:15; 7:34-36; 7:62-67; 8:11-9:9; 10:1-20; 10:57-11:49; 12:1-33; 12:45-13:27; Claims 1, 5, 7, 10, 11 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> Webster New World Dictionary: "secure" and "secured" Merriam-Webster Dictionary: "secure," "secured," and "securing" Webster's American Dictionary: "secure" Color Oxford Dictionary: "secure" Concise Oxford Dictionary: "secure" Oxford Dictionary: "secure" Reports and testimony of Dr. James L. Glancey regarding a POSITA's understanding of this claim term and materials Dr. Glancey relied on.

Claim Term / Phrase	Telebrands' Proposed Construction	Evidence
said flexible inner tube and said flexible outer tube"		<ul style="list-style-type: none"> Materials that Winston's expert, Dr. John M. Feland III, relied on.

b. Winston's Proposed Constructions and Evidence

Claim Term / Phrase	Winston's Proposed Construction	Evidence
<p>'870 Patent, Claim 5</p> <p>and</p> <p>'278 Patent, Claim 5:</p> <p>"A first restrictor sleeve secured to said first end of said inner and said outer tubes"</p> <p>—</p> <p>'915 Patent, Claim 4:</p> <p>"A first restrictor sleeve secured to said first end of said flexible inner tube and said flexible outer tube"</p>	<p>a device that restricts the expansion of the inner tube and is affixed or attached firmly so it cannot be readily removed from the first end of the inner tube and the first end of the outer tube</p>	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> '870 Patent Fig. 1, 3, & 8 '870 Patent 8:44-50, 8:61-64, 10:60-67, 11:4-19, 11:27-33, 11:42-47, 12:49-52, 12:58-62, Claim 5, Claim 7, Claim 18 '870 Patent Claims 5, 7, & 18 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> Color Oxford English Dictionary, Third Edition, 2011: "secure" Concise Oxford English Dictionary, 2008: "secure" Oxford English Dictionary, Second Edition, 1991: "secure" Oxford Thesaurus of English: "affix", "attach", "connect", "connection", "make fast", "tie" Reports and testimony of Dr. John M. Feland III regarding a POSITA's understanding of this claim term and materials Dr. Feland relied on. Reports and testimony of Dr. James L. Glancey and materials Dr. Glancey relied on. Materials that Telebrands' expert, Dr. James L. Glancey, relied on.
<p>'870 Patent, Claim 5</p> <p>and</p> <p>'278 Patent, Claim 5:</p> <p>"A second restrictor sleeve secured to said second end of</p>	<p>a device that restricts the expansion of the inner tube and is affixed or attached firmly so it cannot be readily removed from the second end of the inner tube and the second end of the outer tube</p>	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> '870 Patent Fig. 1, 3, & 7 '870 Patent 8:44-50, 8:61-64, 10:60-67, 11:4-19, 11:27-33, 11:42-47, 12:49-52, 12:58-62, Claim 5, Claim 7, Claim 18 '870 Patent Claims 5, 7, & 18 <p><u>Extrinsic Evidence:</u></p>

Claim Term / Phrase	Winston's Proposed Construction	Evidence
<p>said inner and said outer tubes"</p> <p>_____</p> <p>'915 Patent, Claim 4:</p> <p>"A second restrictor sleeve secured to said second end of said flexible inner tube and said flexible outer tube"</p>		<ul style="list-style-type: none"> • Color Oxford English Dictionary, Third Edition, 2011: "secure" • Concise Oxford English Dictionary, 2008: "secure" • Oxford English Dictionary, Second Edition, 1991: "secure" • Oxford Thesaurus of English: "affix", "attach", "connect", "connection", "make fast", "tie" • Reports and testimony of Dr. John M. Feland III regarding a POSITA's understanding of this claim term and materials Dr. Feland relied on. • Reports and testimony of Dr. James L. Glancey and materials Dr. Glancey relied on.

4. Group D Claim Terms

a. *Telebrands' Proposed Constructions and Evidence*

Claim Term / Phrase	Telebrands' Proposed Construction	Evidence
<p>'870 Patent, Claim 7</p> <p>and</p> <p>'278 Patent, Claim 7:</p> <p>"A first securing device securing said first restrictor sleeve, said outer tube, and said inner tube to said first coupler"</p> <p>_____</p> <p>'915 Patent, Claim 6:</p> <p>"A first securing device securing said first restrictor</p>	<p>Plain and ordinary meaning; no construction necessary</p>	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> • '870 Patent at Figs. 1, 3, 7, 8; Abstract; 1:39-53; 6:65-7:15; 7:34-36; 7:62-67; 8:11-9:10; 10:1-20; 10:57-11:49; 12:1-33; 12:45-13:27; Claims 1, 5, 7, 10-12 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> • Webster New World Dictionary: "secure" and "secured" • Merriam-Webster Dictionary: "secure," "secured," and "securing" • Webster's American Dictionary: "secure" • Color Oxford Dictionary: "secure" • Concise Oxford Dictionary: "secure" • Oxford Dictionary: "secure" • Reports and testimony of Dr. James L. Glancey regarding a POSITA's understanding of this claim term and materials Dr. Glancey relied on. • Materials that Winston's expert, Dr. John M. Feland III, relied on.

Claim Term / Phrase	Telebrands' Proposed Construction	Evidence
sleeve, said flexible outer tube, and said flexible inner tube to said first coupler"		
'870 Patent, Claim 7 and '278 Patent, Claim 7: "A second securing device securing said another expansion restrictor sleeve, said outer tube and said inner tube to said second coupler" —— '915 Patent, Claim 6: "A second securing device securing said second expansion restrictor sleeve, said flexible outer tube and said flexible inner tube to said second coupler"	Plain and ordinary meaning; no construction necessary	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> '870 Patent at Figs. 1, 3, 7, 8; Abstract; 1:39-53; 6:65-7:15; 7:34-36; 7:62-67; 8:11-9:10; 10:1-20; 10:57-11:49; 12:1-33; 12:45-13:27; Claims 1, 5, 7, 10-12 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> Webster New World Dictionary: "secure" and "secured" Merriam-Webster Dictionary: "secure," "secured," and "securing" Webster's American Dictionary: "secure" Color Oxford Dictionary: "secure" Concise Oxford Dictionary: "secure" Oxford Dictionary: "secure" Reports and testimony of Dr. James L. Glancey regarding a POSITA's understanding of this claim term and materials Dr. Glancey relied on. Materials that Winston's expert, Dr. John M. Feland III, relied on.

b. Winston's Proposed Constructions and Evidence

Claim Term / Phrase	Winston's Proposed Construction	Evidence
'870 Patent, Claim 7 and '278 Patent, Claim 7:	a device encompassing and affixing or attaching firmly the first restrictor sleeve, the first end of the outer tube, and the first end of the inner tube to the first coupler so they cannot be readily removed	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> '870 Patent Fig. 1, 3, & 8 '870 Patent 8:44-48 10:65-67, 11:7-9, 11:13-18, 11:31-33, 11: 37-39, 11:45-47 '870 Patent Claims 5, 7, & 18 <p><u>Extrinsic Evidence:</u></p>

Claim Term / Phrase	Winston's Proposed Construction	Evidence
<p>"A first securing device securing said first restrictor sleeve, said outer tube, and said inner tube to said first coupler"</p> <p>_____</p> <p>'915 Patent, Claim 6:</p> <p>"A first securing device securing said first restrictor sleeve, said flexible outer tube, and said flexible inner tube to said first coupler"</p>	<p>"securing device" should be construed under 35 U.S.C. § 112 ¶ 6.</p>	<ul style="list-style-type: none"> • Color Oxford English Dictionary, Third Edition, 2011: "secure" • Concise Oxford English Dictionary, 2008: "secure" • Oxford English Dictionary, Second Edition, 1991: "secure" • Oxford Thesaurus of English: "affix", "attach", "connect", "connection", "make fast", "tie" • Reports and testimony of Dr. John M. Feland III regarding a POSITA's understanding of this claim term and materials Dr. Feland relied on. • Reports and testimony of Dr. James L. Glancey and materials Dr. Glancey relied on.
<p>'870 Patent, Claim 7 and</p> <p>'278 Patent, Claim 7:</p> <p>"A second securing device securing said another expansion restrictor sleeve, said outer tube and said inner tube to said second coupler"</p> <p>_____</p> <p>'915 Patent, Claim 6:</p> <p>"A second securing device securing said second expansion restrictor sleeve, said flexible outer tube and said flexible</p>	<p>a device encompassing and affixing or attaching firmly the second restrictor sleeve, the second end of the outer tube, and the second end of the inner tube to the second coupler so they cannot be readily removed</p> <p>"securing device" should be construed under 35 U.S.C. § 112 ¶ 6.</p>	<p><u>Intrinsic Evidence:</u></p> <ul style="list-style-type: none"> • '870 Patent Fig. 1, 3, & 7 • '870 Patent 8:44-48 10:65-67, 11:7-9, 11:13-18, 11:31-33, 11: 37-39 • '870 Patent Claims 5, 7, & 18 <p><u>Extrinsic Evidence:</u></p> <ul style="list-style-type: none"> • Color Oxford English Dictionary, Third Edition, 2011: "secure" • Concise Oxford English Dictionary, 2008: "secure" • Oxford English Dictionary, Second Edition, 1991: "secure" • Oxford Thesaurus of English: "affix", "attach", "connect", "connection", "make fast", "tie" • Reports and testimony of Dr. John M. Feland III regarding a POSITA's understanding of this claim term and materials Dr. Feland relied on. • Reports and testimony of Dr. James L. Glancey and materials Dr. Glancey relied on.

Claim Term / Phrase	Winston's Proposed Construction	Evidence
inner tube to said second coupler"		

(c) Dispositive And/Or Settlement Promoting Claim Terms

Telebrands' Statement: This case hinges on the construction of the verbs “secured” and “coupled.” All of the terms above contain an iteration of one of these words. If the Court rejects Winston’s constructions, the Accused Products must be found to infringe as a matter of law.

If the Court rejects Winston’s definition of “secured” as requiring something to be “affixed or attached firmly so it cannot be readily removed” and either finds that: (1) no construction is necessary because the term should have its plain and ordinary meaning in line with Telebrands’ proposal, or (2) the Court formulates its own definition that does not require something “secured” to be affixed so firmly that it is not readily removable, Telebrands believes that the Accused Products must be found to infringe the Asserted Patents. This is because the outer tube of the Accused Products is secured to, but readily removable from, the hose couplings.

In addition, if the Court rejects Winston’s definition of “coupled” as requiring something to necessarily be “removably connected to” something else, and either finds that: (1) no construction is necessary because the term should have its plain and ordinary meaning in line with Telebrands’ proposal, or (2) the Court formulates its own definition that does not require something “coupled” to necessarily be “removably connected” to something else, Telebrands believes that the Accused Products must be found to infringe the Asserted Patents. This is because the Asserted Patents require the flow restrictor to be “coupled” to the second coupler, and in the Accused Products, these components are permanently connected to each other, not “removably connected.”

Winston will undoubtedly contend it has other defenses, but construing these terms to exclude the narrowing language Winston proposes should at the least promote further settlement talks, because it would greatly cripple Winston's non-infringement position. The parties have already mediated; that session was productive despite no resolution being reached. A claim construction ruling that forecloses key non-infringement arguments could be a catalyst for additional talks, and Telebrands would be open to that.

Winston's Statement: The Court's construction of the Group A Terms ("secured to" and "to couple/coupled to") will influence the disposition of this case. If the Court adopts Winston's proposed constructions, Telebrands' case will be eviscerated because it will be clear that Winston's products do not infringe Telebrands' products. If the Court agrees with Telebrands that the Group A Terms do not require construction, the case will proceed with the parties hotly contesting infringement and non-infringement. The construction of the remaining Group B, Group C, and Group D Terms are extensions or applications of the Group A terms. Accepting Winston's proposed constructions, which are supported by the above intrinsic evidence, will have an immediate dispositive effect as the Accused Products cannot infringe the Patents-in-Suit as a matter of law. Specifically, if the Court holds that "secured to" means "affixed or attached firmly so it cannot be readily removed from" and that "to couple/coupled to" means "to removably connect/removably connected to," the Court will provide clarification to the claims. The Accused Products do not meet these claim limitations under Winston's constructions. Telebrands admits this in its Reply Claim Construction Brief. Doc. 42 at 8–9. Conversely, if the Court accepts Telebrands' position that no construction is required, the case will likely proceed to trial. First, Winston has robust non-infringement and invalidity defenses. Using the plain and ordinary meaning of the Group A terms does not clarify the scope of the claims, but instead

amplifies ambiguity already present in the claims. The jury will be forced to determine infringement or non-infringement in the face of these claim ambiguities. However, even under Telebrands' approach to claim construction, Winston believes that a jury will find that the Accused Products do not infringe and/or that the patents are invalid. Furthermore, applying no construction leaves the parties in the same position they have been, which resulted in no settlement despite a productive mediation.

(d) Anticipated Length Of Time Necessary For The Claim Construction Hearing

Telebrands' Statement: Telebrands anticipates that approximately three hours should be adequate for the Claim Construction Hearing.

Winston's Statement: Winston believes that approximately three to four hours should be adequate for the Claim Construction Hearing.

(e) Anticipated Witnesses At The Claim Construction Hearing

Telebrands' Statement: Telebrands anticipates that its expert, Dr. James L. Glancey, shall be called to testify as a witness during the Claim Construction Hearing. Dr. Glancey shall be called to provide testimony regarding how a person of ordinary skill in the art would understand each disputed claim term and will provide testimony rebutting the testimony of Dr. Feland.

Winston's Statement: Winston anticipates that its expert, Dr. John Feland shall be called to testify as a witness at the Claim Construction Hearing. Dr. Feland will provide testimony rebutting the testimony of Dr. Glancey.

(f) Additional Issues To Be Considered At A Prehearing Conference

The parties believe that they should discuss with the Court its preferences for the presentation of evidence and argument at the Claim Construction Hearing. For example, does

the Court prefer each side to present their entire argument for all disputed terms at once, with time reserved for rebuttal? Or does the Court prefer the parties argue sequentially on a claim-by-claim basis? The parties propose that the Court schedule a prehearing conference several weeks before the July 24, 2024 Claim Construction Hearing to address these issues and any other questions the Court may have for the parties.

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Respectfully submitted,

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